

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
July 1, 2018)	WC Docket No. 18-100
Annual Access Charge Tariff Filings)	
)	

ORDER

Adopted: April 5, 2018

Released: April 5, 2018

By the Chief, Pricing Policy Division:

15-DAY TARIFF FILINGS:	June 18, 2018
EFFECTIVE:	July 3, 2018
PETITIONS:	June 25, 2018
REPLIES:	June 28, 2018
 7-DAY TARIFF FILINGS:	 June 26, 2018
EFFECTIVE:	July 3, 2018
PETITIONS:	June 27, 2018 (due no later than 12:00 p.m. (noon) Eastern Time)
REPLIES:	June 29, 2018 (due no later than 12:00 p.m. (noon) Eastern Time)

I. INTRODUCTION

1. In this Order, we establish procedures for the 2018 filing of annual access charge tariffs and Tariff Review Plans (TRPs) for incumbent local exchange carriers (LECs) subject to price cap regulation, as well as rate-of-return incumbent LECs subject to sections 61.38 and 61.39 of the Commission's rules.¹

2. This Order (1) sets a modified effective date of July 3, 2018, for the July 2018 annual access charge tariff filings made on both 15 and 7 days' notice;² (2) establishes the dates for filing petitions to suspend or reject an incumbent LEC tariff filing and replies to such petitions;³ (3) addresses service of the petitions and replies; (4) waives for 2018 the requirement that price cap incumbent LECs

¹ 47 C.F.R. §§ 61.38 (rate-of-return carriers that file tariffs based on projected costs and demand), 61.39 (rate-of-return carriers that file tariffs based on historical costs and demand), and 61.43 (tariff filings for price cap LECs).

² To establish an effective date of July 3, 2018 for the tariff filings made on both 15 days' notice and 7 days' notice, we grant a limited waiver of sections 69.3(a), 69.3(f)(1), 51.705, 51.907, and 51.909 of our rules to the extent that those rules would otherwise require rates to be effective as of July 1, 2018. *See* 47 C.F.R. §§ 69.3(a), 69.3(f)(1), 51.705, 51.907, and 51.909. Absent a waiver, carriers would be required to have their annual access charges be effective on July 1, 2018, and doing so would require tariffs including those charges to be filed on June 16 as to 15-day filings, which falls on a Saturday, and on June 24 as to 7-day filings, which falls on a Sunday. Accordingly, under this limited waiver, carriers are required to submit their tariff filings made on 15 days' notice on June 18, 2018 and on June 26 for tariff filings made on 7 days' notice, to become effective on July 3, 2018.

³ We grant a limited waiver of 47 C.F.R. §§ 1.773(a)(2)(i) and (b)(1)(i) to modify the petition and reply filing dates for tariff filings made on 15 and 7 days' notice to provide sufficient time for the submission of any such filings.

file a short form TRP;⁴ and (4) partially waives for the second quarter of 2018 the universal service contribution factor rule to allow incumbent LECs to charge the second quarter 2018 contribution factor until July 3, 2018, at which time they must begin charging the third quarter 2018 contribution factor.⁵ In the *USF/ICC Transformation Order* the Commission adopted new rules requiring incumbent LECs to adjust, over a period of years, many of their switched access charges effective on July 1 of each of those years.⁶ The TRPs also implement these adjustments. All correspondence and comments in connection with these filings should refer to the caption of this proceeding, *July 1, 2018 Annual Access Charge Tariff Filings*, WC Docket No. 18-100.

II. DISCUSSION

A. Tariff Effective Dates and Tariff Filing Dates

3. Incumbent LECs are permitted to make their tariff filings either 15 or 7 days prior to the effective date of their tariffs, depending on the type of changes the tariffs propose.⁷ The Commission's rules require that annual access charge tariff filings be filed with a scheduled effective date of July 1.⁸ Incumbent LECs filing tariffs on 15 days' notice would have to make such filings on June 16, a Saturday, in order for them to take effect on July 1. Incumbent LECs filing tariffs on 7 days' notice would have to file such tariffs on June 24, a Sunday, in order for them to take effect on July 1. Because the Commission is closed on Saturdays and Sundays, it is necessary to modify the usual July 1 effective date for such tariffs. Accordingly, the July 1, 2018 effective date for incumbent LEC tariffs filed on both 15 days' notice and 7 days' notice is modified to be July 3, 2018, and incumbent LECs must make these tariff filings on June 18, 2018 and June 26, 2018, respectively.

4. Incumbent LECs that file tariffs under the price cap ratemaking methodology are required to file revised annual access charge tariffs every year.⁹ Incumbent LECs that file tariffs under a rate-of-return ratemaking methodology are required to file every other year. Incumbent LECs filing pursuant to the requirements of section 61.38 of the Commission's rules are required to file annual access charge tariffs this year, an even-numbered year.¹⁰ Rate-of-return incumbent LECs subject to section 61.39 of the Commission's rules¹¹ would not, absent requirements adopted in the *USF/ICC Transformation Order*,¹² be required to file annual access charge tariffs this year, since they file revisions in odd-numbered years.¹³ Pursuant to the *USF/ICC Transformation Order*, however, rate-of-return incumbent LECs subject to section 61.39 of the Commission's rules must file a TRP this year to comply with the requirements of sections 51.909(h), 51.917(d)(iv), and 51.917(e) of the Commission's rules.¹⁴

5. In addition, rate-of-return incumbent LECs that provide consumer broadband-only loops (CBOLs) and receive Connect America Fund Broadband Loop Support (CAF BLS) (as opposed to

⁴ 47 C.F.R. § 61.49(k).

⁵ 47 C.F.R. § 54.712.

⁶ See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18149, para. 1404 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁷ 47 U.S.C. § 204(a)(3).

⁸ See 47 C.F.R. §§ 69.3(a), 51.705, 51.907, 51.909.

⁹ 47 C.F.R. § 61.43.

¹⁰ 47 C.F.R. § 61.38; 47 C.F.R. § 69.3(f)(1).

¹¹ 47 C.F.R. § 61.98.

¹² See *USF/ICC Transformation Order*, 26 FCC Rcd at 17981-83, paras. 897-99.

¹³ 47 C.F.R. § 69.3(f)(1).

¹⁴ 47 C.F.R. §§ 51.909(h), 51.917(d)(iv), (e).

ACAM-based support) are required to revise their CBOL rates to reflect the level of CAF BLS they expect to receive this coming tariff year.¹⁵ Rate-of-return incumbent LECs subject to section 61.38 of the Commission's rules must base rate-of-return regulated rates for the coming tariff year on new cost studies and the new rules for moving costs from special access to the CBOL category.¹⁶ Rate-of-return incumbent LECs subject to section 61.39 may base rate-of-return regulated rates for the coming tariff year on last tariff year's cost studies and the rules in effect then for moving costs to the CBOL category. Moreover, all rate-of-return incumbent LECs are required to modify their rates to comply with the lower prescribed rate of return for this tariff year, 10.5 percent, and the lower corporate income tax rate that went into effect on January 1, 2018.¹⁷ Finally, rate-of-return incumbent LEC tariff filings must incorporate the new limit on imputed access recovery charge (ARC) revenues from CBOL lines, and the true-up of that imputation made two years ago.¹⁸

B. Waiver of the Short Form TRP

6. For purposes of the 2018 annual filing, on our own motion, and consistent with precedent, we waive section 61.49(k) of the Commission's rules which requires price cap incumbent LECs to submit a short form TRP as part of the annual access charge tariff filing process.¹⁹ The short form TRP is a spreadsheet that is filed without rate detail 90 days prior to the usual annual access charge tariff filing date of July 1.²⁰ It details exogenous cost adjustments that price cap LECs might make to their price cap indices.²¹ Last year we waived the short form TRP filing requirement because the factors needed to calculate exogenous cost adjustments for regulatory fees, Telecommunications Relay Service (TRS) and North American Numbering Plan Administration (NANPA) expenses were not going to be available prior to the short form TRP filing deadline and absent such information, the short form TRP would provide little value to the Commission, industry, and consumers.²² We also recognized that, because the exogenous cost information would be included in the long form TRPs if the new factors were available by the filing date, the requisite data would be made available to the Commission and interested parties through such filings.²³ We therefore found that a waiver of the filing obligation was appropriate "to avoid the unnecessary burden that would be imposed on industry of preparing and filing a short form TRP of questionable value."²⁴

¹⁵ See *Connect America Fund et al.*, Second Order on Reconsideration and Clarification, WC Docket No. 10-90 et al., DA 18-13, para. 13 (Feb. 15, 2018) (*Second Order on Reconsideration and Clarification*).

¹⁶ *Id.* at paras. 9-13.

¹⁷ See *Connect America Fund et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., 31 FCC Rcd 3087, 3212, para. 326 (2016).

¹⁸ *Second Order on Reconsideration and Clarification*, paras. 16-17. See 47 CFR § 51.917(f).

¹⁹ 47 CFR § 61.49(k). See *July 1, 2017 Annual Access Charge Tariff Filings*, WC Docket No. 17-65, Order, 32 FCC Rcd 3878 (WCB 2017) (*2017 Short Form TRP Waiver Order*).

²⁰ See 47 C.F.R. § 61.49(k).

²¹ *2017 Short Form TRP Waiver Order*, 32 FCC Rcd at 3878-79, para. 2.

²² *Id.* at 3879, para. 3.

²³ *Id.* The Bureau has also previously waived the deadline for filing the short form TRP. In 2014, the Bureau granted USTelecom's request for waiver of section 61.49(k) to permit the short form TRP to be filed approximately 45 days prior to the annual access charge tariff effective date. See *July 1, 2014 Annual Access Charge Tariff Filings*, WC Docket No. 14-48, Order, 29 FCC Rcd 3133, 3134-35, paras. 5-6 (WCB 2014).

²⁴ *2017 Short Form TRP Waiver Order*, 32 FCC Rcd at 3878-79, para. 3.

7. Section 1.3 of the Commission's rules authorizes waiver of a Commission rule for good cause shown.²⁵ We find similar considerations that led us to waive the short form TRP filing requirement in 2017 apply this year. As was the case last year, it is unlikely that the necessary information to populate the short form TRPs will be available by the required filing date. In addition, the exogenous cost data contained in the short form TRPs will be included in the long form TRPs, pending availability of such data, at which time the information can be reviewed by the Commission and interested parties. We therefore find that a waiver of this year's obligation is appropriate to avoid the unnecessary burden that would otherwise be required by carriers to prepare and file a short form TRP of probable limited utility and value. This waiver applies to all price cap incumbent LECs that would have filed a short form TRP as part of the 2018 annual access charge filing, absent the waiver.

C. Partial Waiver of USF Contribution Date Rule

8. Also on our own motion and consistent with precedent, we waive section 54.712 of the Commission's rules to the extent necessary to allow carriers filing an annual access charge tariff filing that will be effective July 3, 2018 to use the second quarter universal service fund (USF) contribution factor for the first two days of the third quarter for purposes of recovering the costs of contributing to the universal service fund (USF) through a line item on their customers' bills.²⁶ Section 54.712 of the Commission's rules specifies that "[i]f a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor."²⁷ The USF contribution factor is calculated and published quarterly, and as a result, when there are changes, carriers typically file quarterly tariff revisions to reflect the new USF factor.²⁸

9. Moving the annual access charge tariff effective date to July 3, 2018 creates administrative difficulties with respect to some carriers' transition from the second quarter to the third quarter universal service fund contribution factors. When the annual access charge filings are effective July 1, carriers can file a single tariff, effective July 1, that provides for changes in the USF contribution factor and changes in access charges. Requiring carriers to file tariff revisions to implement the third quarter contribution factor and a separate set of tariff revisions to be effective two days later for changes to access charges would be administratively burdensome for carriers and the Commission. Accordingly, for incumbent LECs and competitive LECs filing an annual access charge tariff filing in 2018, we allow such carriers to charge the universal service contribution factor for the second quarter of 2018 until July 3, 2018, at which time carriers must begin charging the third quarter 2018 contribution factor, with respect to end user charges that are part of the annual access filing.

10. In addition, if a carrier chooses to implement the third quarter 2018 USF contribution factor effective July 1, 2018, we grant a limited waiver of section 61.59(a) of the Commission's rules, to allow such carriers to modify material in their tariff that has not been effective for 30 days, in order to

²⁵ See 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown"). See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1969), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (waivers must show special circumstances warranting a deviation from the general rule, and show such a deviation will serve the public interest).

²⁶ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order (WCB 2012), 27 FCC Rcd 5986, 5990-91, paras. 12-15 (Partially waiving section 54.712 for when, as is the case this year, the tariff filing effective date was modified from July 1 to July 3).

²⁷ 47 C.F.R. § 54.712.

²⁸ See 47 C.F.R. § 54.712.

make their annual access charge tariff filing effective July 3, 2018.²⁹

D. Tariff and Tariff Review Plan Filing Instructions

11. Incumbent LECs must use the Commission's Electronic Tariff Filing System (ETFS) to file all of their tariff material.³⁰ Incumbent LECs should make every effort to file as early in the day as possible to avoid any complications in meeting the June 18, 2018 and June 26, 2018, pre-7:00 p.m. Eastern Time deadlines for filing in the ETFS. Incumbent LEC tariff filings must be received by ETFS after 7:00 p.m. Eastern Time on June 17, 2018 and before 7:00 p.m. Eastern Time on June 18, 2018 for the filing to be considered officially received on June 18, 2018. Incumbent LEC tariff filings must be received after 7:00 p.m. Eastern Time on June 25, 2018 and before 7:00 p.m. Eastern Time on June 26, 2018 for the filing to be considered officially received on June 26, 2018.

12. Copies of the information filed electronically may be obtained via the Internet using ETFS at <https://apps.fcc.gov/etfs/etfsHome.action>. For more information, contact either Robin Cohn or Richard Kwiatkowski, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1540.

E. Pleading Filing Dates and Procedures

13. In accordance with the tariff filing schedule, petitions to suspend or reject tariff filings made on 15 days' notice will be due June 25, 2018, and replies will be due no later than June 28, 2018. Petitions to suspend or reject tariff filings made on seven days' notice will be due no later than 12:00 p.m. (noon) Eastern Time on June 27, 2018, and replies will be due no later than 12 p.m. (noon) Eastern Time on June 29, 2018.³¹

14. Pursuant to sections 1.419 and 1.773 of the Commission's rules,³² interested parties may file petitions to suspend or reject tariff filings, and replies thereto, on or before the dates indicated in this document. Pleadings should reference **WC Docket No. 18-100**, and may be filed using the Electronic Comment Filing System (ECFS).³³

- Electronic Filers: Pleadings may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - ☐ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - ☐ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - ☐ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

²⁹ 47 C.F.R. § 61.59(a).

³⁰ 47 C.F.R. § 61.13(b).

³¹ We waive any inconsistent portions of sections 1.4(f), 1.773(a), and 1.773(b) of the Commission's rules, 47 C.F.R. §§ 1.4(f), 1.773(a), and 1.773(b).

³² 47 C.F.R. §§ 1.419, 1.773.

³³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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15. A courtesy copy of any comments, reply comments, petitions and replies must also be e-mailed to Richard Kwiatkowski, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5-A460, Washington, DC 20554, Richard.Kwiatkowski@fcc.gov. In addition, a courtesy copy must be addressed to the Chief, Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A221, Washington, DC 20554 and e-mailed to Robin.Cohn@fcc.gov.

16. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

F. Service

17. Because there is limited time available for review of the petitions to suspend or reject tariff filings, and replies thereto, we establish the following service requirements for these filings. On the date a filing is submitted to the Commission, it shall also be served upon the filing LEC or the petitioner to which it responds, respectively, or its attorney or other duly constituted agent, by personal delivery, by facsimile transmission, or e-mail.³⁵ Parties are instructed to provide contact persons, email addresses, and facsimile numbers in their filings. Parties filing petitions and replies electronically are reminded that they are still required to serve copies in accordance with the requirements stated in this paragraph.

III. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 5, and 201-209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 155, 201-209, and sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, this Order IS ADOPTED.

19. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, sections 69.3(a), 69.3(f)(1), 51.705, 51.907, and 51.909 ARE WAIVED to the extent specified in *supra* paragraph 2, note 2.

³⁴ 47 C.F.R. § 1.1200 *et seq.*

³⁵ 47 C.F.R. §§ 1.773(a)(4), (b)(3). We waive any inconsistent portions of section 1.47(d) of the Commission’s rules. 47 C.F.R. § 1.47(d).

20. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, sections 1.4(f), 1.773(a) and 1.773(b) of the Commission's rules, 47 C.F.R. §§ 1.4(f), 1.733(a), and 1.773(b), ARE WAIVED for the limited purpose specified in *supra* paragraphs 2, note 3, and 13, note 31.

21. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, section 61.49(k) of the Commission's rules, 47 C.F.R. § 61.49(k), IS WAIVED to the extent specified in *supra* paragraphs 6-7.

22. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, section 54.712 of the Commission's rules, 47 C.F.R. § 54.712, IS WAIVED to the extent specified in *supra* paragraphs 8-10.

23. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, section 61.59(a) of the Commission's rules, 47 C.F.R. § 61.59(a), IS WAIVED to the extent specified in *supra* paragraph 10.

24. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, sections §§ 1.733(a), 1.773(b), and 1.47(d) ARE WAIVED for the limited purpose specified in *supra* paragraph 17, note 35.

25. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Pamela S. Arluk
Chief
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